IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.997 OF 2005

Shri Baburao Pandurang Pawar .. ..Appellant
Versus
Smt Vijaya Shamrao Jadhav & ors. ..Respondents

Mr.K.B.Sonwalkar for appellant

CORAM : P.V.KAKADE, J.

DATE : 20TH SEPTEMBER, 2005.

P.C.:

1. This is an appeal preferred by the appellant against the judgment and order passed by Addl. District Judge Satara dated 24.12.2004 allowing the appeal and setting aside the judgment and order passed by the Civil Judge, Junior Division, Vaduj dated 2.1.2002 dismissing the suit of the plaintiffs.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiffs have filed the suit for partition and possession of the suit property. Plaintiff came

with the case that non agricultural land bearing Gat No.557/2 admeasuring 0-02 H.R. situated at village mouje Pusegaon, Tal. Khatav, was ancestral property of deceased Shamrao Krishna Jadhav, who was husband of plaintiff no.1 and father of plaintiff nos.2 and 3. The suit property came to share of deceased Shamrao in the partition. Shamrao died on 16.7.1987. Plaintiff Nos.1 to 3 are legal heirs of Shamrao, who was said to be addicted to liquor. According to the plaintiffs they have each 1/4th share in the suit property. Shamrao had no right to alienate the suit property in favour of the defendant by sale deed dated 25.7.1985, as there was no legal necessity for joint family but he allegedly executed the sale deed for consideration of Rs.3000/= and therefore, the said transaction dated 19.7.1985 is said to be illegal and void ab-initio. The defendant refused the partition of the suit property and hence the suit came to be filed. The defendant contested the dispute, inter alia, denying the allegations made by the plaintiffs. It was submitted by the defendants that Shamrao was addict in liquor and had sold the property to him out of legal necessity in order to satisfy the debts payable by him and as such the suit was sought to be dismissed.

. The learned trial judge adjudicate the dispute on merits and came to the conclusion that the suit transaction executed by deceased Shamrao was legal necessity and as such the suit for partition and possession of shares was not tenable and came to be dismissed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties allowed the appeal and decreed the suit holding that the sale deed Exh.47 25.7.1985 was not binding on appellants 2 and 3 and the appellant nos.2 and 3 are entitled for partition and separate possession of 1/4th share in the suit land. Hence the present Appeal.

4. At the outset it must be noted that there is absolutely no substantial question of law involved in this appeal. The only question sought to be agitated is whether there was any legal necessity for Shamrao to execute the sale deed of the suit property? In this regard the evidence on record shows that Vijaya widow of Shamrao had entered into the witness box and in categorical terms has stated that Shamrao was addicted to liquor and in fact there was no legal necessity for

Shamrao to sell the suit land but in fact he had sold the suit land to fulfil his thirst of liquor. In support of this evidence the documentary evidence is also brought on record to establish that Shamrao was chronic drunkard. The document relates to the said prosecution against Sharmao under Bombay Prohibition Act, which establishes the fact that he was addicted to drink. It was contended on behalf of the respondents that there was in fact legal necessity for Shamrao to sale the property as he had to satisfy the loan taken by him. However, there is not an iota of evidence to show that any such loan existed on the account of Shamrao payable by him. On the other hand the respondents, on whose burden lies, show that there was legal necessity has not lead any evidence to that effect and therefore, the learned lower appellate court has rightly come to the conclusion that there was no legal necessity for Shamrao to execute the sale deed to sale the property and as such said sale deed would not be binding upon the appellants.

5. There is no important question of law involved in this appeal and all the issues are issues of facts. The learned counsel for the appellant submitted that the

appellant has spent certain amount on the property in order to make construction. However, he cannot get relief in this appeal and if he wants to seek his independent remedy he may pursue his independent remedy. However, no relief can be granted to the respondents in this matter.

6. Therefore, it must be noted that the lower appellate court has proprly appreciated the entire evidence on record in order to hold that there was no legal necessity for Shamrao to execute the sale deed and as such the order passed by the lower appellate court is legal and proper and therefore, it would brook no interference and appeal stands dismissed.

. Consequently the Civil Application No.1525 of 2005 also stands dismissed.